



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 26, 1993

Ms. Debra L. Mitchell  
Principal /Director  
Johnson, Johnson & Roy /inc.  
2828 Routh Street, Suite 600  
Dallas, Texas 75201

OR93-214

Dear Ms. Mitchell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18464.

You inform us that Johnson, Johnson & Roy, Inc. ("JJR") is a for-profit corporation organized under the laws of Michigan, which has recently contracted with a Texas state agency to provide land utilization planning. You have received an open records request for the following information:

1. A list of all, consultants, contractors and sub-contractors with addresses and a copy of any payments, checks, or disbursements made to such consultants, contractors or subcontractors.
2. [I]ndicate if the expenditures to the above referenced consultants, contractors and sub-contractors were advertised for open bid. If so, please furnish the results of those bids.
3. The source of funds to make expenditures to the above referenced consultants, contractors and subcontractors.
4. [D]ocumentation regarding the bidding process and the maximum amount of any expenditure exempt from the bid process.

5. Budget Expenditures: Johnson, Johnson & Roy per budget agreement with Ellis County, Texas [ ] for the period from May 11, 1990, to January 19, 1993.
6. All documentation concerning two contracts, the first for \$3,500,000.00 with the Texas National Research Laboratory Commission, and the second for \$558,900.00 with Ellis County.

You ask whether JJR is a governmental body subject to the Texas Open records Act. We conclude that it is not. Consequently, you may withhold the requested information.

Under the Texas Open Records Act, all information in the possession of "governmental bodies" is available to the public, with certain enumerated exceptions. V.T.C.S. article 6252-17 §3(a). Section 2(1) of the Open Records Act defines "governmental body" as follows:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed member;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rulemaking or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the governing body of every nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and that is exempt from ad valorem taxation under Section 11.30, Tax Code;

(G) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is

supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(H) the Judiciary is not included with this definition.

*Id.* A for-profit corporation organized under the laws of the state of Michigan clearly is not within sections (A) - (F) of this definition of "governmental body." But we must consider whether the fact that JJR has contracted with a Texas agency brings it within section (G) of that definition.

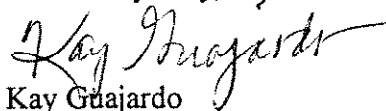
Under section (G), "a corporation . . . supported in whole or in part by public funds" is a "governmental body." Does the fact that JJR has entered into a multi-million contract with a Texas agency mean that JJR is "supported in part by public funds?"

Where a governmental body makes a specific payment for specific measurable services, as opposed to providing general financial support, to an outside entity, that entity is not "supported in part by public funds" for purposes of section (G) of the Open Records Act. *See* Open Records Decision Nos. 343 (1982); 228 (1979). In this case, a governmental body paid JJR for a specific service, land utilization planning. Thus, JJR is not within the definition of "governmental body" under section (G). *See also* Open Records Decision No. 1 (1973).

Nor is this a situation in which a private entity holds requested information that it has prepared for a governmental body. *See e.g.*, Open Records Decision No. 437 (1986) (records prepared by bond underwriters and attorneys for utility district). Information maintained by a private entity that was prepared for a governmental body is subject to the Open Records Act if the governmental body has a right of access to the information. *See* V.T.C.S. art. 6252-17a, §3(a); Open Records Decision No. 558 (1990). Here, the requested information was not prepared for the use of a governmental body.

In conclusion, JJR need not comply with the open records requests since it is not a governmental body under the Texas Open Records Act. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-214.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/SG/le

Enclosures: submitted documents

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